

ITEM:

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SUBJECT:

City of Lodi, Guild Cleaners, Inc, Odd Fellows Hall Association of Lodi, Estate of Dwight Alquist, Lodi News Sentinel, Beckman Capital Corporation, Central Plume Area, Lodi, San Joaquin County

BOARD ACTION:

Consideration of: 1) City's Assumption of Responsibility Agreement; 2) Covenant Not to Sue (CNS) Dischargers Guild Cleaners et al., Odd Fellows Hall Association of Lodi and Beckman Capital Corporation; 3) Authorization to amend a Cleanup and Abatement Order.

BACKGROUND:

Past operations of dry cleaning facilities and a printing plant resulted in discharges of PCE to the soils and to the City's sewer lines, which subsequently released PCE to the soils and groundwater. Cleanup of this PCE pollution is necessary to protect currently unpolluted municipal supply wells and prevent the PCE from further migration into previously clean groundwater.

The Board issued a Cleanup and Abatement Order (CAO) at its April 22, 2004 meeting. The Dischargers have complied with the requirements of the CAO. Work accomplished under the CAO includes the completion of the groundwater investigations, area-wide investigations of indoor-air impacts of the contamination, performance of soil vapor extraction studies, and submittal of a draft Remedial Investigation/Feasibility Study document.

The City initiated and continues to pursue legal action in federal court against a number of responsible parties at the Central Plume Area. (*City of Lodi v. M&P Investments, et al.*, E.D. Cal. Case No. CIV S-00-2441.) The City has entered settlement agreements with the other Central Plume defendants that collectively contain the following elements:

- 1) The Dischargers will contribute to a trust fund to be used for investigation and remediation of the site as follows:

- City of Lodi	\$2,200,000
- Guild Cleaners	\$4,200,000
- Lodi New Sentinel	\$2,000,000
- Oddfellows	\$1,000,000
- Beckman Capital	<u>\$ 175,000</u>
TOTAL	\$9,575,000

- 2) The City's settlements in the *M&P Investments* case are contingent upon the Central Valley Water Board and the Department of Toxic Substances Control providing the non-City Dischargers with Covenants-Not-to-Sue (CNS), releasing them from obligations under the CAO.

In a separate agreement with the Water Board, the City of Lodi will agree

to complete all investigation and cleanup of the contamination at the Central Plume Area in accordance with the CAO. The City will also assume the other parties' liability to comply with the CAO. The CNS will not take effect until the Water Board-City agreement is final.

Implementation of these Settlement Agreements requires the Board to approve the CNS as to the non-City Dischargers. The CAO would be amended, following court approval of the City-Discharger settlements, to remove the non-City Dischargers. (The Water Board settlements are not subject to court approval.) Also, at the time of amendment, the work and schedule in the CAO would be updated.

ISSUES:

- 1) Based on currently available information, Water Board staff and the City's consultant believe that the amount placed in the trust is sufficient to cover the capital cost of implementing certain remedies at the site but is insufficient to cover the complete costs of implementing those remedies when the costs of operation and maintenance are included in the total. In exchange for a promise from the City to pay those additional costs, the Board is forgoing the ability to recover those additional costs from the parties other than the City. The Board entered a separate settlement with Lodi News Sentinel and Fred Weybret, in which the Board agrees not to sue those parties, but only as long as the City performs all work under the CAO to the Board's satisfaction. This agreement essentially makes Lodi News Sentinel and Mr. Weybret secondarily liable for compliance with the CAO. Water Board staff believes that the City can and will raise the additional funds for the operation and maintenance phase of the clean-up. Water Board staff believes there is less uncertainty with regards to funding the remedial actions through the settlements than through other means.
- 2) The actual remedial methods to be implemented are not known at this time. The remedial actions for the site will be selected through a process involving public input and environmental impact analysis resulting in a formal Remedial Action Plan or "RAP". Until the RAP is prepared the remedies to be implemented and their associated costs are unknown. Water Board staff believe that certain remedies are likely to be implemented at the site and that the estimated costs for those remedies are the most likely costs to be incurred in remediation of the site. If remedial actions different from those expected are chosen in the RAP, the City would remain obligated to pay the associated costs for those different actions.

After the hearing, the Board may adjourn to closed session to deliberate on the decision to be reached based upon the evidence introduced at the hearing. Authority: Government Code Section 11126(c)(3). The Board may also discuss pending litigation in closed session (City of Lodi petition regarding Lodi Central Area PCE sites SWRCB/OCC File A-1639(c) (Review of Cleanup and Abatement Order R5-2004-0043); and Lodi News Sentinel v. RWQCB). Authority: Government Code Section 11126(e).

Mgmt. Review _____
Legal Review _____

05 August 2005
Regional Water Quality Control Board
Regular Meeting
11020 Sun Center Drive, #200
Rancho Cordova, California